

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN KENNEDY,

Defendant-Appellant.

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UNPUBLISHED

July 12, 2005

No. 252548

Wayne Circuit Court

LC No. 00-012319-01

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs\*, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of eight to fifteen years imposed on remand on his jury conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm.

Defendant repeatedly visited an apartment in search of his fiancée, was informed that she was not present in the apartment, and then stabbed the victim after an argument ensued. The statutory sentencing guidelines established a minimum term range of nineteen to seventy-six months. The trial court sentenced defendant as a fourth habitual offender to twenty to forty years in prison, finding that his postoffense predatory conduct was not adequately accounted for in the guidelines, and constituted a substantial and compelling reason for departing from the guidelines.

In *People v Kennedy*, unpublished opinion per curiam of the Court of Appeals, decided September 4, 2003 (Docket No. 234899), this Court affirmed defendant's conviction, but vacated his sentence and remanded for resentencing. The *Kennedy* Court concluded that although the trial court had a substantial and compelling reason for departing upward from the guidelines range, the minimum term of twenty years was disproportionate to defendant's circumstances and those of the offense. On remand, the trial court sentenced defendant to eight to fifteen years in prison, with credit for 1,112 days.

Generally, a trial court must impose a sentence within the established guidelines range, unless a substantial and compelling reason exists to depart from the guidelines. A substantial and compelling reason articulated by a trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003). In departing from the guidelines, the trial court must determine

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\* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

whether the particular departure is proportionate to the circumstances of the offense and the offender. *Id.* at 262-264; *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

We affirm defendant's sentence.<sup>1</sup> Defendant contacted the victim's fiancée numerous times after the stabbing, and threatened to engage in further assaultive behavior. The trial court cited this behavior as support for its decision to exceed the guidelines by twenty months. Contrary to defendant's assertion, the record does not show that the trial court departed upward from the guidelines based on his behavior in prison. We defer to the trial court's direct knowledge of the facts and its familiarity with defendant. *Babcock, supra* at 270. A departure of less than two years above the guidelines is not outside the range of principled outcomes. *Id.* at 265-269; *Milbourn, supra*.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gribbs

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<sup>1</sup> The *Kennedy* Court's decision that the trial court articulated a substantial and compelling reason for departing upward from the guidelines constitutes the law of the case. *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994).